



## **"Revaluation of business assets Legislative Decree no. 104/2020: accounting and tax implications"**

Legislative Decree No. 104 of 14 August 2020 governs the revaluation of assets and participations held by commercial undertakings.

In the case of revaluation with recognition only in the statutory accounts, the law allows the transaction to be carried out at zero cost. The accounting treatment in this case is referred to in PC-OIC 25, in this situation a temporary difference will be generated between higher statutory values and lower fiscal values, which will lead to the recognition of deferred taxes. In subsequent years, the deferred taxes will be reversed to the profit and loss account to the extent of the realisation of the higher value (depreciation, sale, write-down).

In the case of revaluations that are also recognised for tax purposes, with tax effects from 2021, a substitute tax at a reduced rate of 3% is due, with the possibility of payment in three equal instalments. The tax effects can be summarised as follows

- higher depreciation deductions
  - increase in the deductibility ceiling for maintenance expenses pursuant to Article 102 c.6 of the Consolidated Income Tax Act;
  - increase in the values to be assumed in the application of the test of convenience (for non-operating companies) pursuant to Article 30 L. 724/94.
  - lower capital gains in the event of disposal (starting from the 2024 financial statements. In fact, in case of sale of the revalued assets, capital gains and/or losses must be calculated considering the higher values only if the sale takes place in the fourth year following the revaluation).
- The positive balance of the revaluation must be allocated to increase the share capital, subject to a further resolution of the extraordinary shareholders' meeting; or alternatively, it may be allocated to a special reserve designated with reference to the law in question, excluding any other use. The reserve may be reduced considering the provisions of the second and third articles of Article 2445 of the Italian Civil Code. Furthermore, if the reserve is used to cover losses, no profits may be distributed until the reserve is replenished or reduced by a corresponding amount by resolution of the extraordinary shareholders' meeting, with the provisions of the second and third paragraphs of Article 2445 of the Italian Civil Code not applying.

In the event of distribution to shareholders, it will be subject to taxation, being to all intents and purposes a tax-suspension reserve, it will be possible to release such reserve with a 10% substitute tax.

Paragraph 6 of the Decree-Law governs the procedures for the payment of the substitute taxes, which will be paid in a maximum of three equal instalments, and may be offset pursuant to Legislative Decree No. 241 of 9 July 1997.

Among the few negative aspects of the revaluation, it should be noted that the revaluation in question will increase the value of fixed assets as of the 2021 tax year, and will also produce direct effects in future years on the calculation of the three-year average value of assets, with the risk, if the value of revenues is not congruous, of being subject to the discipline provided for shell companies for the purposes of determining the amount of presumed revenues of the test of operativeness according to the analytical provisions of Article 30 of Law 724/1994.